

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION

JESSIE HOLMES,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CIVIL ACTION NO. 2:06cv958-MHT
	)	
GREIL HOSPITAL, <i>et al.</i> ,	)	
	)	
Defendants.	)	

**ORDER**

In their answer filed with this court on December 27, 2006, the respondents assert that the petitioner has failed to exhaust state remedies with respect to the claims now pending before this court. The law directs that a petition for writ of habeas corpus filed by “a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that the applicant has exhausted the remedies available in the courts of the [convicting] State. . .” 28 U.S.C. § 2254(1)(b)(1)(A). Because Holmes is “in custody pursuant to the judgment of a State court” any habeas petition he files is subject to the procedural restrictions set forth in 28 U.S.C. § 2254. *See Thomas v. Crosby*, 371 F.3d 782, 787 (11<sup>th</sup> Cir. 2004); *Medberry v. Crosby*, 351 F.3d 1049, 1060 (11<sup>th</sup> Cir. 2003). It is clear from the pleadings filed in this case that the petitioner has not yet exhausted his available state court remedies with respect to the claims presented in his petition for habeas corpus relief. This court does not deem it appropriate to rule on the merits of the petitioner’s claims without first requiring that the petitioner exhaust state remedies. *See* 28 U.S.C. § 2254(1)(b)(2).

Moreover, it does not appear that a stay of this case is warranted pending the outcome of any state court collateral proceeding Holmes may file as there is nothing before this court which indicates “good cause for the petitioner’s failure to exhaust his claims first in state court.” *Rhines v. Weber*, 544 U.S. 269, 125 S.Ct. 1528, 1535 (2005).

Accordingly, it is ORDERED that on or before January 12, 2007, the petitioner shall show cause why his petition should not be dismissed for failure to exhaust available state remedies.

Done this 28<sup>th</sup> day of December, 2006.

/s/Charles S. Coody  
CHARLES S. COODY  
CHIEF UNITED STATES MAGISTRATE JUDGE